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CENTRAL DISTRICT OF CALIFORNIA

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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11 DONNA OSBORNE MCKENZIE,) Case No. EDCV 08-00033-VAP
12 Plaintiff,) (OPx)
13 v.) [Motions filed on January
14 EOG RESOURCES, INC.,) 18, 2008]
15 MARK B. PAPA, CEO) ORDER GRANTING MOTION TO
16 CHAIRMAN OF THE BOARD,) TRANSFER VENUE
17 Defendants.)

18 The Court has received and considered all papers
19 filed in support of, and in opposition to, Defendants
20 Motions to Transfer Venue and to Dismiss. The Motions
21 are appropriate for resolution without oral argument.
22 See Fed. R. Civ. P. 78; Local Rule 7-15. For the reasons
23 set forth below, the Court GRANTS the Motion to Transfer
24 and declines to rule on the Motion to Dismiss.

25

26 I. BACKGROUND

27 On December 12, 2007, Plaintiff Donna Osborne
28 McKenzie, proceeding pro se, filed a Complaint ("Compl.")

1 in the California Superior Court for the County of San
2 Bernardino, naming as defendants EOG Resources, Inc. and
3 Mark B. Papa (collectively "Defendants"). The Complaint
4 asserts a claim for nonpayment of a mineral production
5 payment pursuant to section 31:212.21-.23 of the
6 Louisiana Revised Statutes. Defendants removed the case
7 to this Court on January 11, 2008.

8

9 On January 18, 2008, Defendant EOG Resources, Inc.
10 ("EOG") filed a Motion to Transfer Venue to the United
11 States District Court for the Western District of
12 Louisiana ("Mot. Transfer") and Defendant Papa filed a
13 Motion to Dismiss. On February 6, 2007, Plaintiff filed
14 an Opposition to the Motion to Dismiss. Defendant filed
15 a Reply in support of both motions on February 15, 2008.
16 Plaintiff filed an Opposition to the Motion to Transfer
17 on February 22, 2008.¹

18

19 II. MOTION TO TRANSFER VENUE

20 A. Improper Venue

21 Pursuant to 28 U.S.C. § 1331(a),

22 A civil action wherein jurisdiction is
23 founded only on diversity of citizenship
24 may, except as otherwise provided by law,
25 be brought only in (1) a judicial
district where any defendant resides, if
all defendants reside in the same State,
(2) a judicial district in which a
substantial part of the events or

27 _____
28 ¹The Court reviewed and considered Plaintiff's
untimely-filed Opposition to the Motion to Transfer.

1 omissions giving rise to the claim
2 occurred, or a substantial part of
3 property that is the subject of the
4 action is situated, or (3) a judicial
5 district in which any defendant is
subject to personal jurisdiction at the
time the action is commenced, if there is
no district in which the action may
otherwise be brought.

6 For the purposes of venue, a corporate defendant
7 "resides" "in any judicial district in which it is
8 subject to personal jurisdiction. . . ." 28 U.S.C. §
9 1391(c).

10

11 Here, subject matter jurisdiction over Plaintiff's
12 Complaint is founded solely on diversity of citizenship.
13 (See Notice of Removal, filed January 11, 2008 ¶¶ 4-8.)
14 Defendant Papa resides in Sugar Land, Texas. (Id. Ex. D,
15 Decl. of Papa in Support of Removal ¶ 1.) Defendant EOG
16 is deemed to reside, among other places, in Houston
17 Texas, because its principal place of business is there,
18 and thus it is subject to personal jurisdiction there.
19 See Doe v. Unocal Corp., 248 F.3d 915, 923 (9th Cir.
20 2001) (general personal jurisdiction exists when the
21 defendant's activities within a state are "substantial,
22 continuous and systematic.") Thus, pursuant to 28 U.S.C.
23 § 1391(a)(1), proper venue for this case lies in the
24 Southern District of Texas.²

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² The Court takes judicial notice that both Sugar
27 Land, Texas and Houston, Texas are situated in the
28 Southern District of Texas.

1 Venue in the Central District of California cannot be
2 premised on 28 U.S.C. § 1391(a)(2) because there is no
3 evidence that a "substantial part of the events or
4 omissions giving rise to the claim occurred" in this
5 district. See 28 U.S.C. § 1391(a)(2). On the contrary,
6 the "property that is the subject of the action is
7 situated" in Jackson Parish, Louisiana. (Compl. ¶ 2.)
8 The events and omissions giving rise to Plaintiff's
9 claim, namely the operation of oil wells and the alleged
10 failure to respond to Plaintiff's demands for payment,
11 occurred in Louisiana and Texas. (Id. ¶¶ 2-7.) Thus,
12 venue would be proper under § 1391(a)(2) in either the
13 Western District of Louisiana³ or the Southern District
14 of Texas.

15

16 Finally, venue is not proper in the Central District
17 of California pursuant to 28 U.S.C. § 1391(a)(3), because
18 there is a "district in which the action may otherwise be
19 brought." See 28 U.S.C. § 1391(a)(3). As explained
20 above, venue in this case is proper in the Southern
21 District of Texas and the Western District of Louisiana.
22 Accordingly, venue is not proper in the Central District
23 of California.

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³ The Court takes judicial notice that Jonesboro,
28 Louisiana the seat of Jackson Parish, Louisiana, is
situated in the Western District of Louisiana.

1 Defendant EOG argues that venue for this case is laid
2 properly only in Louisiana, because proper venue in
3 "cases involving title to real property" lies only where
4 the subject property is located. (Mot. Transfer at 4.)
5 Indeed, the cases cited by EOG establish the "local
6 action rule" under which "a court sitting in one state
7 cannot adjudicate title to land situated in a different
8 state."⁴ See Hayes v. Gulf Oil Corp., 821 F.2d 285,
9 290 (5th Cir. 1987) (citing Louisville & N.R.R. v.
10 Western Union Telegraph Co., 234 U.S. 369 (1914)). A
11 court in this circuit recently recognized the local
12 action rule. See Durbin v. National Loan Investors, 2002
13 WL 31052430, *1 (N.D. Cal. 2002) (vacated on other
14 grounds).

15

16 Courts traditionally apply the local action rule in
17 cases where title to land is in issue. See, e.g. Hayes,
18 821 F.2d at 288 (holding that an action to claim title to
19 an oil and gas lease was "local" specifically because it
20 was "an action to try title to real property"). Here,
21 neither party directly contests title to any property.
22 Cf. Durbin, 2002 WL 31052430, at *1 & n.4 (holding that
23 the local action doctrine does not apply because the
24 plaintiff's claim arose out of a settlement agreement,

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26

27 ⁴It is unclear whether the local action doctrine runs
28 to the jurisdiction or the venue of a court. See Trust
Co. Bank v. U.S. Gypsum Co. 950 F.2d 1144, 1149 (5th Cir.
1992)

1 and because the plaintiff did not request an adjudication
2 of the deed on the plaintiff's property).

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4 Courts have also applied the rule, however, in
5 actions such as trespass that arise from property rights
6 but which do not directly contest title. See, e.g.
7 Ellenwood v. Marietta Chair Co., 158 U.S. 105, 107
8 (1895); Livingston v. Jefferson, 15 F. Cas. 660, 667 (No.
9 411) (C.C. D.Va. 1811) (dismissing a claim for trespass
10 on land in Louisiana against former president Thomas
11 Jefferson). The Durbin court thus concluded that "local
12 actions are those where the transactions upon which they
13 are founded could only have occurred in the location
14 where the real property was situated." Durbin, 2002 WL
15 31052430, at *1.

16

17 The Court need not decide whether the local action
18 rule applied in this case, because the Court transfers
19 venue to Louisiana based on other considerations.
20 Pursuant to 28 U.S.C. § 1406(a), when a plaintiff files a
21 case in a district where venue is improper, the district
22 court shall dismiss the case or transfer it to a district
23 where venue is proper. 28 U.S.C. § 1406(a). As
24 explained above, venue is improper in the Central
25 District of California. Venue is proper in the Western
26 District of Louisiana, however, because the property from
27 which the dispute arises is located there. See 28 U.S.C.
28

1 § 1406(a)(2). Moreover, the case raises questions of
2 Louisiana law, with which a district court situated in
3 Louisiana will be more familiar. (See Compl. ¶¶ 5-7
4 (arguing for damages under Louisiana's Mineral Code).)

5

6 IV. CONCLUSION

7 For the foregoing reasons, the Court GRANTS the
8 Motion to Transfer. Accordingly, the Court declines to
9 rule on the Motion to Dismiss. The Court VACATES the
10 hearing on the Motions to Dismiss and Transfer set for
11 February 25, 2008. The clerk is directed to forward the
12 case to the district court in the Western District of
13 Louisiana.

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15 Dated: February 25, 2008

Virginia A. Phillips
16 VIRGINIA A. PHILLIPS
17 United States District Judge

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